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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2021/36970

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

(4) Date: 30 April 2025

Signature:

In the matter between:

M[...] S[...] M[...]

Applicant

(born M[...])

(ID: 7[...])

And

A[...] R[...] M[...]

Respondent

(ID: 6[...])

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is an application in terms of Uniform Rule 43(6)¹ for the variation of a Rule 43 order granted on 27 October 2021. The variation sought involves:

- 1.1 an increase in monthly maintenance payable to the applicant as well as the payment of suitable rental for accommodation.
- 1.2 that the respondent keeps the applicant on his medical aid and pays the shortfall not covered for medical expenses, as well as the payment of such alleged arrear medical expenses. And
- 1.3 a R300 000.00 further contribution for legal costs.

[2] The respondent opposes this application and argues that:

- 2.1 there has been no material change in circumstances justifying a variation of the rule 43 order and that the increase in maintenance that is sought is excessive and unaffordable.
- 2.2 As to the applicant's accommodation, the respondent has made a generous housing tender (which was made and rejected in the rule 43 application).
- 2.3 It was also argued that the Court cannot grant an order in respect of the medical aid and payment of the shortfall of medical expenses as such an order was originally granted by Judge Noko in the rule 43 proceedings.
- 2.4 It is also improper to claim a monetary judgment for such alleged arrear medical expenses in rule 43(6) proceedings and the applicant should, if aggrieved, issue a writ or proceed with contempt of court proceedings.
- 2.5 the further contribution of R 300 000.00 is not even justified on the applicant's own papers and covers unnecessary expenses including luxurious expenses for senior counsel and a forensic accountant (both of whom are unwarranted in the divorce

¹ Uniform Rule 43(6) reads as follows: *"The court may, on the same procedure, vary its decision in the event of a material change occurring in the circumstances of either party or a child, or the contribution towards costs proving inadequate."*

proceedings). This submission is principally made based on the applicant's own assertion in the rule 43 proceedings that she only required R 20 000.00 as a contribution for legal costs up to the first day of trial to put her case to the court and litigate on an equal footing with the respondent.

B. APPLICANT'S ASSERTIONS

- [3] Of great concern to the applicant is the fact that whilst the respondent has kept to the dictates of the order granted on 27 October 2021 as regards the maintenance amount and the contribution towards her legal costs and retaining her on a medical aid, he has not paid for the shortfalls not covered by the medical aid scheme and refuses to do so.
- [4] Applicant requires a further contribution towards her legal costs as the first allocation of such costs has already been utilised in full and as the matter is now ready for trial, further costs are to be incurred in preparation for the trial.
- [5] Although in her initial claim she sought payment not only of the cash maintenance but expenses in relation to accommodation, these claims were unfortunately not granted. Prior to the rule 43 order being granted, the respondent had agreed to pay the applicant's rental expenses. He however, ceased payments after a short while and has not recommenced in so doing.
- [6] As a result of the respondent's non-payments², the applicant has had to relocate a number of times from an apartment to Pretoria East until eventually she has sought shelter in a safe house provided by a church in an area known as Rabokala.

² Applicant's founding affidavit para 6.

- [7] The applicant submits that she finds continual living in the church safe house completely unacceptable and as the respondent is a man of means, there is no reason why he should not undertake to pay a reasonable amount of rental for the applicant to live in suitable accommodation.
- [8] The respondent offered in the initial rule 43 and once again in this application for the applicant to reside at a property in Pretoria. The applicant does not wish to live there as she believes it is unsafe for her as she has had issues previously in regard to the respondent's violent behaviour towards her and also his son's behaviour towards the applicant. The tender made by the respondent is therefore not suitable and the applicant persists in the relief that she seeks in the notice of motion.
- [9] In relation to the applicant's monthly expenses, the applicant set out her anticipated monthly expenses in the initial rule 43 as being R60 000,00. The fact that she was awarded a sum of only R20 000,00 has made her life extremely onerous. It is now three years since the order was granted, there has been no increase in the maintenance offered by the respondent and the applicant is simply not able to come out on the sum of R20 000,00 taking into account her daily expenses, her medical expenses and even a contribution to her legal expenses.
- [10] The applicant has not been gainfully employed since 2010 due to an existing permanent health condition that disqualifies her from being able to work and earn an income.³ She suffers from a number of other ailments.

C. THE APPLICABLE LEGAL PRINCIPLES

Maintenance

³ Applicant's founding affidavit para 6.

[11] In *S v S and Another*⁴ the Constitutional Court confirmed the High Court's finding that a rule 43(6) application is applicable to changed circumstances. The apex court further stated that:

*"There may be exceptional cases where there is a need to remedy a patently unjust and erroneous order and no changed circumstances exist, however expansively interpreted. In those instances, where strict adherence to the rules is at variance with the interests of justice, a court may exercise its inherent power in terms of section 173 of the Constitution to regulate its own process in the interests of justice..."*⁵

[12] In the applicant's case, she is currently on R20 000,00 per month maintenance since 2021. She is seeking an amount of R50 000.00 per month. Her circumstances cannot be said to have been static.

Contribution to legal costs

[13] A claim for a contribution towards legal costs has Constitutional implications of equality before the courts and actually predates our Constitution.⁶

[14] The Applicant relies on the case of *SH v MH 2023 (6) SA 279 (GJ)* in support of the relief that she seeks in terms of Rule 43(6) in regard to a contribution towards costs. It is stated that the following applies in casu:

"To be equal before the law the parties require equality of arms. In addition to this common law principle, the Constitution requires that when a judge exercises his/her discretion in determining the extent of the contribution towards costs, he/she is bound by section 9 to guarantee the right to equality before the law and equal protection of it." (Headnote in relation to the abovementioned case).

⁴ 2019 (6) SA 1 (CC) at para [17].

⁵ Para [58] footnotes omitted.

⁶ Erasmus Superior Court Practice – RS 25, 2024, D1 Rule 43-8.

Financial disclosure

- [15] Whilst the applicant has filed a detailed financial disclosure form (“FDF”), the respondent did not. The submission made on his behalf is that he had health challenges of his own. He was due to undergo a gall bladder operation and at the time he was incoherent and could not file a FDF.
- [16] While the court has sympathy for the respondent, the submission above was just bare and unaccompanied by a shred of documentary proof in support thereof.
- [17] The importance of full financial disclosure of the respective party has been stated and emphasised in a myriad of cases, its purpose being recognised as to enable each party to properly assess their respective positions, to present argument based on a more informed position, to have an available remedy for misrepresentation or material non-disclosure, and to enable the court to make an order based on an informed decision.⁷
- [18] The applicant has submitted that she has no funds to compel the respondent to file his FDF.⁸ The court is left none the wiser as to respondent’s true financial position, but for what the applicant has disclosed and her assertions that the respondent is a man of substantial means.⁹
- [19] The respondent has balked in the face of the applicant’s claims for medical expenses arrears of R45 000.00 being sought by the applicant. On his behalf it was submitted that rule 43 is not the appropriate avenue for such a complaint and that the applicant should rather issue a writ of execution or pursue contempt proceedings.

⁷ Taute v Taute 1974 (2) SA 675 (E) at 676 H; TS v TS 2018 (3) SA 572 (GJ); E v E 2019 (5) SA 566 (GJ).

⁸ *Greyling v Greyling* [1959 \(3\) SA 967 \(W\)](#); *Harwood v Harwood* [1976 \(4\) SA 586 \(C\)](#); *Griesel v Griesel* [1981 \(4\) SA 270 \(O\)](#).

⁹ Applicant’s founding affidavit para 7.

[20] The court in *A.F v M.F*¹⁰ held that there is no bar to a spouse from claiming debts that she had to incur in order to maintain herself. A similar approach was followed in *Cary v Cary*¹¹ and numerous other matters.

[21] The applicant has in her founding affidavit placed sufficient facts before the court in support of her contentions that her financial situation has changed for the worse in a material sense since the initial order was made in October 2021 to date.

[22] The respondent on the other hand has made bald statements in denial of the applicant's demands.

22.1 He repeats his tender of accommodation and states that the allegations of abuse are entirely a fabrication and that he is the one being abused and assaulted.

22.2 He accuses the applicant of abuse of legal process stating that the applicant is merely seeking a second bite of the cherry.

[23] On a conspectus of the evidence presented, the applicant has discharged the onus on her on a balance of probabilities. Her application succeeds.

[24] The following order is made:

¹⁰ 2019 (6) SA 422 (WCC); [2019] ZAWCHC 111.

¹¹ 1999 (3) SA 615 (C).

- (i) The respondent is ordered to pay maintenance to the applicant in the amount of R50 000.00 per month.
- (ii) That rental of suitable accommodation be paid by the Respondent on behalf of the Applicant directly to the landlord or agent including any deposits required.
- (iii) That the respondent is ordered to pay a contribution to the applicant's legal costs in the sum of R300 000,00.
- (iv) That the Respondent is ordered to pay arrears of medical expenses in the sum of R52 737,08.
- (v) That the Respondent is ordered to continue to retain the Applicant on his medical aid scheme and be liable for all reasonable and necessary excesses not covered by the said medical aid scheme.
- (vi) Costs of this application to be taxed at scale B.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 27/01/2025

Date of Judgment: 30 April 2025

On behalf of the Applicant: Adv. SA Nathan SC

Instructed by: S Twala Attorneys.

On behalf of the Defendants: Adv. D. Block

Instructed by: Van Zyl Johnson Inc.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 30 April 2025.